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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REAL PROPERTY IN CHINO,
CALIFORNIA,

Defendant.

) Case No. CV 02-01798 CAS (CTx)

ORDER DENYING CLAIMANT'S
MOTION TO VACATE ORDER
DISMISSING ACTION WITHOUT
PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 60(b)(3)

FRANK P. ACOSTA, KELLI DAVIS
PETERSON, aka KELLI DAVIS
HUMPHREY, COUNTY OF SAN
BERNARDINO, and COMMUNITY
COMMERCE BANK,

Claimants.

I. INTRODUCTION & BACKGROUND

On November 6, 2009, plaintiff United States of America and claimants Frank P. Acosta and Kelli Davis Peterson filed a stipulated request for dismissal of the government's civil forfeiture action against defendant Real Property in Chino,

1 California. The parties have stipulated as follows:

2 This civil forfeiture action arises from the same general facts as the criminal
3 actions entitled United States v. Frank P. Acosta, CR 02-390 (B) AHS, and United
4 States v. Kelli Anne Peterson, CR 03-41 GPS. Claimants Acosta and Peterson were
5 convicted in the referenced criminal actions and ordered to pay restitution in the sums
6 of \$1,364,214.60 (Acosta) and \$2,146,564.00 (Peterson). Claimants Acosta and
7 Peterson are the beneficial owners of the defendant real property.

8 Claimants County of San Bernardino and Community Commerce Bank hold
9 secured interests in the defendant real property that are not sought to be forfeited by the
10 government and are not challenged by claimants Acosta and Peterson. The secured
11 interest of the County of San Bernardino in the defendant real property was formally
12 recognized by a stipulation and order entered in this action on May 2, 2002 (docket
13 #19). The secured interest of Community Commerce Bank in the defendant real
14 property was formally recognized by a stipulation and order entered in this action on
15 August 13, 2002 (docket # 30). The orders recognizing these liens provided that the
16 liens would be paid upon forfeiture and sale of the defendant real property. The
17 dismissal ordered herein will have no effect on the liens, which are to be paid out of the
18 gross proceeds of the sale.

19 The government and claimants Acosta and Peterson have agreed that the
20 defendant real property should be sold and the net proceeds that otherwise would be
21 paid to claimants Acosta and Peterson should be applied to the above-referenced
22 restitution orders. The stipulating parties have further agreed that the sale of the
23 defendant property and distribution of the proceeds of sale to restitution are more
24 efficiently handled through the criminal cases by the Financial Litigation Unit of the
25 U.S. Attorney's Office. The parties contemplate that each of Acosta and Peterson will
26 receive full credit against their respective restitution orders in the amount of net sales
27 proceeds actually applied to restitution.

28 On November 12, 2009, the Court granted parties' stipulated request and

1 dismissed the action without prejudice.

2 On August 31, 2010, claimant Acosta, proceeding pro se, moved to vacate the
 3 Court's November 12, 2009 order dismissing the action pursuant to Federal Rule of
 4 Civil Procedure 60(b)(3). On October 4, 2010, the government filed its opposition.
 5 The Court took the matter under submission on September 8, 2010. After carefully
 6 considering the arguments set forth by the parties, the Court finds and concludes as
 7 follows.

8 **II. LEGAL STANDARD**

9 Under Rule 60(b)(3), the court may relieve a party from a final judgment, order,
 10 or proceeding any order based on "fraud . . . , misrepresentation, or misconduct of an
 11 adverse party." Fed. R. Civ. P. 60(b)(3). To prevail under Rule 60(b)(3), the moving
 12 party must establish by clear and convincing evidence that a judgment was obtained by
 13 fraud, misrepresentation, or misconduct and that the conduct complained of prevented
 14 the moving party from fully and fairly presenting the case. Casey v. Albertsons's Inc.,
 15 362 F.3d 1254, 1260 (9th Cir. 2004).

16 **III. DISCUSSION**

17 Claimant argues that the government's entry into the Stipulation Agreement
 18 ("Stipulation") and the government's "refusal to honor the Stipulation" constitutes fraud.
 19 Mot. at 1. Claimant asserts that he should have received "full credit of any and all net
 20 sales proceeds derived from the sale of the property" under the Stipulation. Id. at 2.
 21 Claimant contends that the government had "knowing intent to dishonor the terms of
 22 the Stipulation by not giving Acosta full credit of \$801,195.00 towards his restitution
 23 amount." Id.

24 The government responds that claimant's assertion that the government failed to
 25 comply with the terms of the Court's order is false. Opp'n at 3. The government argues
 26 that the defendant real property was sold and the net proceeds of the sale were applied
 27 to the criminal restitution orders in accordance with the Court's November 12, 2009
 28 order. Id. at 2-3. The government argues that even if it were true that claimant did not

1 receive proper credit toward his restitution, claimant's motion is futile and improper
2 because the claimant's challenge should have been made in the criminal case in which
3 the restitution order was issued, rather than in the dismissed civil forfeiture case. Id. at
4 3. Claimant does not provide any evidence to support his claim that he did not receive
5 full credit towards his restitution.

6 Even if it could be said that the claimant did not receive proper credit toward his
7 restitution, claimant's arguments still fail to prove by clear and convincing evidence that
8 any conduct by the government rises to the level of fraud, misrepresentation, or
9 misconduct. The Court thus concludes that claimant is not entitled to relief from
10 judgment under Federal Rule of Civil Procedure 60(b)(3) because claimant has failed to
11 meet his burden.

12 **IV. CONCLUSION**

13 In accordance with the foregoing, the Court hereby DENIES claimant Acosta's
14 motion to vacate the Court's November 12, 2009 order.

15 **IT IS SO ORDERED.**

16 Dated: November 15, 2010

Christina A. Snyder
CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE